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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination of the Parent-Child Relationship of A.L.D., Minor Child, and Crystal H. Dumas, Mother,	)	
CRYSTAL H. DUMAS,	)	
Appellant-Respondent,	)	
vs.	)	No. 08A04-0604-JV-223
CARROLL COUNTY DEPARTMENT OF CHILD SEVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE CARROLL SUPERIOR COURT
The Honorable Jeffrey R. Smith, Judge
Cause No. 08D01-0509-JT-4

January 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Chief Judge

Crystal H. Dumas ("Mother") appeals the trial court's order terminating her parental rights as to her minor child, A.L.D. She raises two issues, which we restate as:

I. Whether the trial court abused its discretion when it denied Mother's motion to continue the termination hearing until after she was released from incarceration; and

II. Whether sufficient evidence was presented to support the trial court's decision to terminate Mother's parental rights.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother gave birth to A.L.D. on October 23, 2004. Mother also had two children prior to A.L.D., and she had voluntarily terminated her parental rights as to them on November 3, 2004. Although she was married to Arthur Dumas, Sr. at the time of A.L.D.'s birth, Danny Moyers ("Father") was later determined to be the father of A.L.D.[1] In August 2004, while pregnant with A.L.D., Mother was convicted of public intoxication and was placed on probation for one year. On October 18, 2004, five days before A.L.D. was born, Mother tested positive for cocaine. As a result, following A.L.D.'s birth, the Carroll County Department of Child Services ("DCS") took custody of him when he was discharged from the hospital. DCS filed a Child in Need of Services ("CHINS") petition, and A.L.D. was eventually found to be a CHINS on January 28, 2005.

On November 18, 2004, Mother sold five Xanax pills at her residence to a confidential informant, and was charged with dealing in a schedule IV controlled substance as a Class B felony. Additionally, prior to the birth of A.L.D., Mother's residence had been used as a

methamphetamine lab by her husband. On January 28, 2005, Mother was found to have violated her probation on her public intoxication conviction because she had tested positive for cocaine in October of 2004 and was ordered to serve ten days in jail. When she was released from jail, Mother moved into Lafayette Transitional Housing ("LTH"), which was a residential facility that received referrals from various agencies and helped the residents become self-sufficient. On May 11, 2005, Mother pled guilty to one count of dealing in a schedule IV controlled substance as a Class B felony and theft as a Class D felony. She was sentenced to eight years and one year, respectively, with the sentences to be served concurrently. Her sentence was suspended, and she was ordered to serve four years on supervised probation.

As part of the CHINS proceeding, an Order of Parental Participation was entered on March 17, 2005. In this order, Mother was required to comply with LTH program requirements, secure and maintain employment, maintain sobriety and be drug and alcohol free, attend Narcotics Anonymous ("NA") meetings, successfully participate in individual therapy and a psychological evaluation, contribute to the costs of care for A.L.D. when she became employed, obey any terms of her criminal probation requirements, and participate and cooperate with Preventative Aftercare Services, which would serve as a liaison between Mother and DCS. After being released from jail, Mother remained living at LTH until June 2005.

[1] Danny Moyers was originally a party to the termination proceedings, and he voluntarily consented to the termination of his parental rights to A.L.D. on December 6, 2005.

On June 2, 2005, a petition to revoke probation was filed because of Mother's failure to follow LTH rules, her failure to maintain employment, and her having been untruthful to her probation officer about her employment. Mother's violations of LTH rules included fraternization with a convicted felon male resident, David Wierenga. On June 9, 2005, Mother left the state without permission with Wierenga. Another petition for probation revocation was filed on June 17, 2005 because of Mother's flight from the state. A few days later, Mother was arrested in Florida and returned to Indiana. On September 7, 2005, the trial court revoked Mother's probation and imposed two years of her previously suspended sentence. Mother's expected release date was July 2, 2006.

On September 29, 2005, DCS filed a petition for termination of the parent-child relationship between Mother and A.L.D. The termination hearing was held on December 6, 2005, and continued on February 7, 2006 and February 14, 2006. On February 7, Mother filed a motion to continue the hearing until after she was released from incarceration. The trial court denied that motion on February 14.

At the termination hearing, evidence was presented that Mother had failed to: (1) comply with LTH program requirements; (2) maintain employment; (3) remain drug and alcohol free; (4) participate in individual therapy or a psychological evaluation; and (5) support A.L.D. There was also testimony that, when not incarcerated, Mother had regular supervised visitation with A.L.D. and had attended NA meetings. Additionally, Mother had passed all drug screens given by LTH and the probation department. While incarcerated, Mother took a parenting class and studied the Bible. On March 29, 2006, the trial court

entered an order terminating Mother's parental rights as to A.L.D. Mother now appeals. Additional facts will be added as necessary.

DISCUSSION AND DECISION

I. Motion to Continue

The decision to grant or deny a motion for a continuance is within the sound discretion of the trial court. *Litherland v. McDonnell*, 796 N.E.2d 1237, 1240 (Ind. Ct. App. 2003), *trans. denied*. We will only reverse the trial court for an abuse of that discretion. *Id*. "An abuse of discretion may be found on the denial of a motion for a continuance when the moving party has shown good cause for granting the motion." *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied*. No abuse of discretion will be found when the moving party has not shown that he or she was prejudiced by the denial. *Id*.

Mother argues that the trial court abused its discretion when it denied her motion to continue the termination hearing until after she was released from incarceration. She relies on this court's decision in *Rowlett* for her contention. In *Rowlett*, the father had been incarcerated about two months after the CHINS case had begun and had remained incarcerated during the entire termination proceeding. *Id*. at 618. He requested a continuance of the termination hearing until after his release, which was denied by the trial court. *Id*. A panel of this court concluded that the trial court had abused its discretion in denying the motion for a continuance because the father had shown good cause for granting the motion in that it would provide him an opportunity to participate in services offered by the Office of Family and Children, which were directed at reunification with the children,

and because prejudice had been shown in that his ability to care for the children had been assessed at the time of hearing when he was incarcerated and had not yet had the opportunity to participate in services or demonstrate his fitness as a parent. *Id*. at 619. It was also determined that termination was particularly harsh because the father had participated in numerous services and programs helpful in the goal of reunification while he was incarcerated. *Id*. The panel concluded that the trial court should have continued the termination hearing until "after Father was given a sufficient period following his release to demonstrate his willingness and ability to assume parental duties." *Id*. at 620.

Here, unlike the father in *Rowlett*, who did not have custody of his children or any chance to demonstrate his parental abilities before his incarceration, Mother had a sufficient period of time prior to her incarceration to demonstrate her willingness and ability to assume parental responsibilities and to participate in the numerous services offered by DCS. Prior to her incarceration, Mother signed a parental participation order, which provided her an opportunity for individual and family services aimed at reunification with A.L.D. However, she did not take advantage of these services and, instead, chose to leave the state without permission with a convicted felon, which violated her probation. Notably, Mother did this only a few days after appearing for a probation revocation hearing, where she was admonished by the CHINS court that unless she changed her life dramatically, DCS intended to file for termination. *State's Ex*. 28. In its order terminating Mother's parental rights, the trial court addressed the *Rowlett* decision and concluded that, unlike the father in that case, Mother had sufficient time to participate in the services offered and to demonstrate her ability and willingness to assume her duties as a parent. "Instead, after the birth of the child,

[Mother] chose to continue using drugs, committed the criminal offense of dealing drugs, disregarded probation rules, disregarded the basic rules of [LTH], and finally totally abandon[ed] her child with another convicted felon." *Appellant's App*. at 32. We conclude that Mother was given sufficient time and opportunity to take advantage of the reunification services before she left the state and abandoned A.L.D. The trial court did not abuse its discretion when it denied Mother's motion to continue the hearing until after she was released from incarceration.

II. Sufficient Evidence

Although parental rights are constitutionally protected, they are not absolute and must be subordinated to the child's interest when determining the proper disposition of a petition to terminate parental rights. *In re D.G.*, 702 N.E.2d 777, 781 (Ind. Ct. App. 1998). The purpose of terminating parental rights is not to punish parents but to protect their child. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). Termination of parental rights can be proper not only when the child is in immediate physical danger, but also when the child's emotional and physical development is threatened. *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*.

Because the trial court in this case entered findings and conclusions, the specific findings control only as to the issues they cover, and the general judgment controls as to the issues upon which the court has not made findings. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 198 (Ind. Ct. App. 2003). The specific findings will not be set aside unless they are clearly erroneous, and we will affirm the general judgment on any legal theory supported by the evidence. *Id*. When we review the trial court's findings, we

neither reweigh the evidence nor judge the credibility of the witnesses. *Id*. We consider only the evidence and reasonable inferences drawn therefrom, which support the verdict. *Id*. A judgment is clearly erroneous when it is unsupported by the findings and conclusions entered upon those findings. *Id*. at 198-99. We will only reverse a termination of parental rights on appeal upon a showing of clear error, which leaves us with a definite and firm conviction that a mistake has been made. *Id*. at 199.

Mother argues that DCS failed to present sufficient evidence to support the termination of her parental rights. In order to effect the termination of a parent-child relationship, DCS must establish that:

> (A) one of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> >
> > (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
> >
> > (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is a reasonable probability that:
>
> > (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> >
> > (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

IC 31-35-2-4(b)(2). These allegations must be proven by clear and convincing evidence. IC 31-37-14-2; *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*.

Mother specifically contends that DCS did not prove by clear and convincing evidence that the conditions that resulted in the removal of the child would not be remedied, that the continuation of the parent-child relationship posed a threat to the well-being of the child, and that termination was in the best interests of the child.[2]

A. Conditions That Resulted in Removal Will Not Be Remedied

Although Mother appears to raise both elements of IC 31-35-2-4(B) on appeal, because the statute is written in the disjunctive, the trial court need only find either that the conditions causing removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. We focus our review on the first element.

"Where there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied the parent-child relationship can be terminated." *In re A.A.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). The trial court must judge a parent's fitness to care for the child at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d at 721. The trial court must also evaluate the parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.*; *In re C.M.*, 675 N.E.2d 1134, 1139 (Ind. Ct.

[2] Mother does not challenge that the child had been removed from her care for the requisite amounts of time or that there is a satisfactory plan for the care and treatment of the child.

App. 1997). A trial court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. *McBride*, 798 N.E.2d at 199.

Mother contends that DCS did not demonstrate a reasonable probability that the conditions resulting in the removal of A.L.D. will not be remedied. She specifically argues that her involvement with drugs, as well as the fact that her own mother was involved with drugs and that she herself was declared a CHINS when she was a child, heavily influenced her lack of cooperation with the services offered by DCS. She also claims that she had successfully completed several addiction programs, attended NA meetings regularly, earned her GED, and attended regular visitations with A.L.D. Additionally, Mother asserts that, at the time of the hearing and while still incarcerated, she had begun to remedy the conditions that resulted in A.L.D.'s removal. This was evidenced by her excelling in a parenting class, studying the Bible, engaging in individual counseling, and learning that she must stay away from drugs and from anyone who uses drugs. Mother's arguments essentially ask this court to reweigh the evidence presented at the hearing, which we will not do on review. *See In re D.G.*, 702 N.E.2d at 780.

Here, the trial court found that Mother had not demonstrated any willingness or ability to assume parental duties and had not participated in any of the numerous services offered to her by DCS to reach the goal of reunification with A.L.D. She instead had chosen to continue using drugs, commit criminal offenses, violate her probation several times, disregard the rules at LTH, and abandon her child by leaving the state without permission and with a convicted felon. Evidence was also presented that Mother had two children

before A.L.D., who were also adjudicated to be CHINS, and that Mother had voluntarily terminated her parental rights as to these children. *Tr*. at 12-13; *State's Ex*. 21, 22. The DCS caseworker, Kathy Shank, testified that Mother failed to comply with reunifications services as to these two children by failing to attend parent education classes, failing to support either child, refusing therapy, and continuing to use drugs. *Tr*. at 40-44. Further, Mother continued to use drugs and alcohol while pregnant with A.L.D. During her pregnancy, she was arrested for and convicted of public intoxication, admitted using methamphetamine, and tested positive for cocaine. *Id*. at 7-9. Evidence was also presented that Mother lied to Shank regarding her employment, seeing an individual therapist, making an appointment to have a psychological evaluation, and her violation of LTH rules and relationship with Wierenga. *Id*. at 63-72.

Mother put her own interest in having a relationship with Wierenga ahead of her interest in obtaining custody of A.L.D. She fraternized with him in violation of LTH rules, which put her at risk of losing her housing and violating her probation. Finally, she fled the state and went to Florida with Wierenga, knowing that this made her a fugitive and unable to visit A.L.D. The trial court did not err in finding that DCS proved that there existed a reasonable probability that the conditions that resulted in the removal of the A.L.D. would not be remedied.

B. Best Interest of Child

Mother also argues that there is insufficient evidence to prove that termination of her parental rights was in the best interest of A.L.D. In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence. *In re D.D.*, 804

N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id*. Testimony of the DCS caseworker and the Guardian Ad Litem has been found to be sufficient to support the trial court's conclusion that termination was in the best interest of the child. *McBride*, 798 N.E.2d at 203.

Here, the totality of the evidence demonstrated that termination was in the best interest of the child. The evidence showed that Mother had a history of drug use and of not being able to adhere to her probation requirements. Mother used drugs before becoming pregnant with A.L.D. and continued using drugs and alcohol during her pregnancy even after being cautioned by DCS about the risks to the baby. She tested positive for cocaine five days before the birth of A.L.D., which was a violation of her probation. Additionally, shortly after the birth of A.L.D., and while she was on probation for public intoxication, Mother committed the offense of dealing in a schedule IV controlled substance, which was another violation of her probation. A few months later, she again violated her probation by failing to follow LTH rules, failing to maintain employment and lying about it, and leaving the state without permission. This violation of her probation and the subsequent revocation resulted in Mother being ordered to serve a portion of her previously suspended sentence. Shank, the DCS caseworker, testified that it was in the best interest of A.L.D. for Mother's parental rights to be terminated and for A.L.D. to be raised with his brother. *Tr*. at 80-81. The Guardian Ad Litem also testified that termination was in the best interest of A.L.D. *Id*. at 104. Therefore, based upon the totality of the evidence, the trial court's finding that termination was in the best interests of the child was supported by the evidence.

Affirmed.

RILEY, J., and FRIEDLANDER, J., concur.